IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5798 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT RAJYA BAL KALYAN SANGH - Petitioner(s)

Versus

JYOTIBEN HEMANTBHAI SHAH & 1 - Respondent(s)

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Appearance :

MR MEHUL H RATHOD for Petitioner(s) : 1,
MR HARSHAD J SHAH for Respondent(s) : 1,
SERVED BY RPAD - (R) for Respondent(s) : 2,
MR MANOJ N POPAT for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 17/11/2005

0RAL JUDGMENT

1. By way of this petition, the petitioner has challenged the judgement and order dated 04.05.02 passed by the Labour Court, Ahmedabad in Reference (LCA)

No.1982/92 whereby the Labour court has partly allowed the reference directing the petitioner to reinstate the respondent with 80% backwages and awarded a cost of Rs.500/-.

2. The short facts of the case are as under:

2.1 The petitioner is an institution working under the scheme introduced by the Central Social Welfare Board-respondent no.2 herein. Pursuant to the scheme, respondent no.1 was appointed as a Social Worker on 01.11.1991 on temporary basis. However, as per the communication of the Central Social Welfare Board dated 01.06.1992 marked as Annexure 'B' to this petition, the scheme was revised w.e.f 01.04.92 wherein the qualification of the Counselors/Social workers was amended as Post Graduate with Psychology having at least two years experience in the relevant field. It was also made clear in the communication that the institution will not be entitled to any grant under the scheme if the counselors appointed by the institutions do not possess the requisite qualification and experience.

2.2 The petitioner terminated the service of the respondent no.1 by issuing a relieving order on 08.06.1992 whereby she was paid the requisite notice pay

of Rs. 2400/-. The same was the subject matter of complaint before the Assistant Labour Commissioner, Ahmedabad who in turn referred the dispute raised by the respondent no.1 for adjudication to the Labour Court, Ahmedabad. The Labour Court held that the scheme of the Central Social Welfare Board was effective from 01.04.1992 and if a person is appointed prior to that date then the scheme will not be applicable to that person.

3. Mr. Mehul Rathod, the learned advocate appearing for the petitioner has submitted that the Labour Court has committed an error in interpreting the communication received by the petitioner. It was clearly stated in the petition that the institution will not be entitled to any grant if the counselors/social workers appointed do not have the requisite qualification. Moreover, the petitioner did not have any power to relax the qualification as the institution was located in an urban area. Mr Rathod further submitted that even if the findings of the Labour Court are accepted, it has to be understood that the respondent no.1 was on probation and requisite notice pay as compensation was paid to the respondent no.1. He contended that the Labour Court has, therefore, committed an error in directing reinstatement

with backwages.

4. Mr M.N. Popat, the learned advocate appearing for respondent no.2 has contended that the communication dated 01.06.1992 will strictly apply and if there is a breach of any condition action will be taken thereto.

5. Mr Bhatt, the learned advocate appearing for Mr Shah for the respondent no. 1 contended that the respondent no.1 was appointed after issuing advertisement in the newspapers and as she was duly qualified she was appointed, but with ulterior motive to deprive her of the services she has been terminated.

6. Heard learned advocates for the respective parties. As a result of the hearing and perusal of the records, I am of the opinion that the Labour Court has committed an error in considering the case that the qualification in question will apply from 01.04.1992 and the persons appointed before this date will not be affected. In that view of the matter, the order of the Labour Court is required to be quashed and set aside. Even if it is assumed that the scheme is applicable from 01.04.1992, respondent no.1 was appointed only on 01.11.1991 on probation and relieved on 08.06.1992 whereby she had

worked for less than a year and the petitioner has complied with the provisions of the Act. No illegality is, therefore, committed by the petitioner. The petitioner was justified in relieving the respondent after following due procedure. In that view of the matter, the Labour Court should not have passed the order of reinstatement.

7. In the premises aforesaid the award of the Labour Court is quashed and set aside. Rule made absolute with no order as to costs.

(K.S. JHAVERI, J.)

Divya//